

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 David L. Dearing,

5 Petitioner

6 v.

7 State of Nevada, et al.,

8 Respondents
9

2:17-cv-02516-JAD-GWF

Order Dismissing Case

[ECF No. 1-1]

10 Pro se petitioner David Dearing is serving an 18-month sentence after he was convicted
11 of domestic-violence battery, coercion, and petit larceny.¹ He filed a motion to vacate, set aside,
12 or correct his sentence under 28 U.S.C. § 2255,² but he has not paid the filing fee or filed an
13 application to proceed *in forma pauperis*. Dearing seems to actually challenge a state judgment
14 of conviction, so he needs to file a § 2254 petition for a writ of habeas corpus on this court's
15 form. This matter, therefore, has not been properly commenced.³

16 Accordingly, IT IS HEREBY ORDERED that this **case is DISMISSED without**
17 **prejudice** to Dearing's ability to file a petition for a writ of habeas corpus in a new, separate
18 case. If Dearing chooses to file a habeas petition, he must either: (1) pay the \$5.00 filing fee, or
19 (2) file a completed application to proceed *in forma pauperis* on the proper form with a properly
20 executed financial certificate and inmate-account statements.

21 Dearing at all times remains responsible for properly exhausting his claims, for
22 calculating the federal limitations period as applied to his case, and for properly commencing a
23 timely filed federal habeas action.

24 The **Clerk of Court** is directed to **DETACH and FILE** the motion to vacate [ECF No.
25

26 ¹ ECF No. 1-1 at 2.

27 ² *Id.*

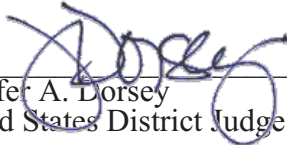
28 ³ 28 U.S.C. § 1915(a)(2) (2016), Local Rules LSR1-2, 3-1.

1-1].

IT IS FURTHER ORDERED that the motion to vacate [ECF No. 1-1] is **DENIED**.

The **Clerk of Court** is also directed to **SEND to Dearing** two copies each of an application form to proceed *in forma pauperis* for prisoners, a noncapital § 2254 habeas petition form, one copy of the instructions for each form, and a copy of the papers that he submitted in this action.

DATED: November 13, 2017.



Jennifer A. Dorsey
United States District Judge